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May 26, 2011

VIA ECF

Hon. Brian M. Cogan, U.S.D.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

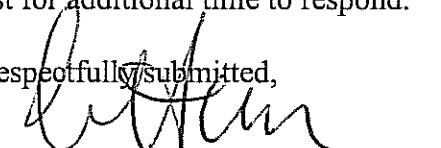
Re: *United States v. Thomas Gioeli*
Criminal No.: 08 CR 240 (BMC)

Dear Judge Cogan:

The defense response to the government's *in limine* motion to admit certain evidence at trial (Doc. No. 1134) is due to be filed on May 27, 2011. This is an application to the Court for an extension of two weeks in which to file our response. The government has consented to this request, with the stipulation that it be afforded a similar extension to file its reply. If the Court agrees to this application, the defense response will be due on June 10, 2011.

We would point out to the Court that the defense has attempted to obtain additional information from the government, which would presumably facilitate a resolution of some of the issues raised in the motion. See letter to AUSA Elizabeth Geddes dated May 4, 2011 (copy attached hereto). The government responded today (copy attached) (and previously informally) that it has no intention of providing any of the requested information, thereby requiring the defense to attempt to address the numerous vague allegations contained in the motion without further details. This has occasioned this request for additional time to respond.

Respectfully submitted,


CARL J. HERMAN

CJH:mdr
Attachments

cc: All Attorneys of Record
Thomas Gioeli

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OF COUNSEL
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May 4, 2011

VIA FACSIMILE ONLY
DO NOT FILE ON ECF

AUSA Elizabeth Geddes
AUSA James Gatta
AUSA Christina Posa
United States Attorney's Office
Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Thomas Gioeli and Dino Saracino
Case No. 07-cr-240 (S-6) (BMC) (RER)

Dear Ms. Geddes, Mr. Gatta and Ms. Posa:

I am counsel for Thomas Gioeli with Carl J. Herman, Esq. in connection with the above matter. I am writing in connection with the government's recent motion *in limine* to admit certain evidence against the defendants at trial. By order dated April 16, 2011, the Court has directed the government's motion to be placed under sealing pending adjudication of the government's application. We are *not* filing this letter on ECF to preserve the intent of the Court's directive in this regard.

By our count the government seeks to introduce evidence of 25 "other" or "uncharged" crimes against Mr. Gioeli. Some of these allegations involve incidents which took place almost 30 years ago. Many of the alleged "uncharged" crimes are listed without any indication of the date (or year) or the victim of the crime. Obviously the defense is in no position to respond to your motion in a responsible manner without additional information, which we believe is in your possession.

AUSA Elizabeth Geddes

AUSA James Gatta

AUSA Christina Posa

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Accordingly, please consider the following to be our request for additional details regarding the government's motion. While we obviously intend to file a formal request to the Court to obtain this information, we would hope to avoid needless litigation if the government will voluntarily provide the requested information. The information requested is as follows:

1. Murder of A Nun

- a. The specific dates, times and locations where Gioeli allegedly told CW-1 that Gioeli was "going to hell" for the inadvertent death of Veronica Zuraw.

2. Conspiracy to Murder Paul Gulino

- a. The specific date, time and location of the alleged assault by Paul Gulino on CW-1 and Richard Greaves.
- b. The specific date, time and location where Gioeli allegedly authorized CW-1 and Greaves to kill Gulino.

3. Murder of James "Jimmy Brown" Clemenza

- a. The specific date, time and location where Gioeli allegedly told CW-1 that Colombo family acting boss Alphonse Persico wanted Colombo family member James "Jimmy Brown" Clemenza killed.
- b. The specific date, time and location where Gioeli allegedly provided CW-1 with an address where James "Jimmy Brown" Clemenza could be found.
- c. The specific address Gioeli provided CW-1 to locate James "Jimmy Brown" Clemenza.
- d. The specific dates, times and locations where Gioeli and CW-1 allegedly conducted surveillance to find James "Jimmy Brown" Clemenza.

4. Conspiracy to Murder Ralph Lombardo

- a. The specific date, time, locations and to whom Alphonse Persico allegedly indicated that he wanted CW-1 inducted as a made member of the Colombo family and placed in the crew of Ralph Lombardo in order to kill Lombardo.

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- b. The specific date, time, place and location where Gioeli and CW-1 allegedly discussed Alphonse Persico's order regarding Ralph Lombardo with Joel "Joe Waverly" Cacace.
- c. The specific date, time and location Alphonse Persico allegedly sent Gioeli a message inquiring about the status of the plan to kill Ralph Lombardo
- d. The specific date, time, location and identity of the other Colombo family members Gioeli and CW-1 allegedly conveyed the order to kill Ralph Lombardo.

5. Bank Burglaries & Robberies

- a. The specific date, time, name and location of the bank in Farmingdale Gioeli, CW-1 and CW-2 allegedly burglarized by breaking through a wall behind an ATM and stealing approximately \$20,000 in cash proceeds.
- b. The specific date, time, name and location of the bank on Long Island that Gioeli, Saracino, CW-1, CW-4 and Greaves allegedly attempted to burglarize by kicking in a wall constructed of drywall and then using a blowtorch to open a safe located inside of the bank.

6. Theft of Trailer Loads

- a. The specific dates, times, location and identity of trailers in the mid-1990s, Gioeli, Saracino, CW-1, CW-2 and CW-4 allegedly stole containing shipments of goods.
- b. The specific dates, times, locations and to whom Gioeli, Saracino, CW-1, CW-2 and CW-4 allegedly sold goods stolen from various trailers in the mid-1990s.
- c. The specific date and time CW-1 and CW-2 allegedly stole a trailer containing appliances and furniture from the Macy's parking lot in Massapequa Mall.
- d. The specific location of the warehouse in Long Island that Gioeli allegedly leased to store the trailer and/or appliances and furniture stolen by CW-1 and CW-2 from the Macy's parking lot in Massapequa Mall.

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- e. The specific date, time and location when CW-1, CW-2 and others stole truckloads of goods from a trucking depot located in Long Island and alleged shared with Gioeli the proceeds of the sold stolen goods.
- f. The specific date, time and location where Gioeli allegedly told CW-1, Greaves and others about a potential "score" involving leather coats.
- g. The identity of the family friend of Gioeli who allegedly told Gioeli about a truckload of leather coats parked outside a particular residence.
- h. The specific location of where Greaves and another individual allegedly stole the truck containing leather coats and where they unloaded the coats from the truck.

7. Robbery of Convenience Store

- a. The specific date, time, name and location of the convenience store in Massapequa that Gioeli, Ennab "OJ" Awjab and Greaves allegedly robbed sometime in and around January 1991.
- b. The identity of New York State Lottery officials to whom notification was made regarding the theft of scratch-off lottery tickets allegedly stolen by Gioeli, Ennab "OJ" Awjab and Greaves from a convenience store in Massapequa in or around January 1991.

8. Convenience Store Robbery

- a. The specific date, time, name and location of the candy store in the Mill Basin neighborhood of Brooklyn that Saracino and CW-1 allegedly robbed and then split \$250 in proceeds with Gioeli.

9. Robbery of a Drug Dealer

- a. The specific date, time, location and identity of the drug dealer whom Gioeli allegedly authorized CW-1 and Greaves to rob.

10. Robbery of a Long Island Meat Market

- a. The specific date, time, name and location of the Long Island Meat Market Gioeli allegedly robbed with CW-1 and Greaves.

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- b. The names of the Long Island Meat Market owners whom Greaves allegedly took a bag filled with evening proceeds in concert with Gioeli and CW-1.

11. Conspiracy to Rob a Jewelry Store

- a. The specific name and location of the jewelry store in the vicinity of Route 110 and Hempstead Turnpike in Farmingdale where Gioeli, CW-1 and Greaves allegedly conducted surveillance.
- b. The specific dates and times that Gioeli, CW-1 and Greaves allegedly conducted surveillance of the jewelry store in the vicinity of Route 110 and Hempstead Turnpike in Farmingdale.

12. Attempted Burglary of Farmingdale Meat Markets

- a. The specific location of Farmingdale Meat Markets that Gioeli, CW-1, CW-2 and Greaves allegedly attempted to rob but aborted when an alarm went off.
- b. The specific dates and time that Gioeli, CW-1, CW-2 and Greaves alleged attempted to rob Farmingdale Meat Markets.

13. Conspiracy to Rob Pat's Farms

- a. The specific dates, location and times that Gioeli and CW-1 allegedly conducted surveillance of Pat's Farms in Farmingdale for the purpose of robbing the owner.
- b. The specific name and home address of the owner of Pat's Farms at the time Gioeli and CW-1 allegedly conducted surveillance of that individual.

14. Conspiracy to Rob Armored Car Depot

- a. The specific name and location of the armored car depot on Route 110 in or around Farmingdale where Gioeli, CW-1 and Greaves allegedly conducted surveillance for the purposes of robbing that location.
- b. The specific dates and times that Gioeli, CW-1 and Greaves allegedly conducted surveillance of the armored car depot on Route 110 in or around Farmingdale for the purpose of robbing it.

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15. Conspiracy to Rob Adventureland

- a. The specific location of the Adventureland amusement park back office where Gioeli, CW-1 and Greaves allegedly conducted surveillance for the purpose of robbing that location.
- b. The specific dates and times that Gioeli, CW-1 and Greaves allegedly conducted surveillance of the Adventureland amusement park back office for the purpose of robbing that location.

16. Attempted Fur Store Burglary

- a. The specific date, time and location of the fur store in vicinity of Route 110 on Long Island that Gioeli, Saracino, CW-1 and CW-4 attempted to burglarize by CW-1 and CW-4 trying to break through a wall with sledgehammers from an adjoining retail space.

17. Suit Store Burglary

- a. The specific location of the suit store on Long Island that Gioeli, Saracino, CW-1 and CW-2 allegedly burglarized on January 25, 1996.
- b. The specific date, time and location where CW-1 and CW-2 sold suits allegedly stolen from a suit store on Long Island on January 25, 1996.

18. Conspiracy to Burglarize the Owner of Lotus Garden

- a. The specific date and time during 2000 when Gioeli, CW-1 and an alleged Colombo family associate allegedly conducted surveillance on the owner of the Lotus Garden Chinese restaurant in Farmingdale for the purpose of robbing him.
- b. The specific location of the residence of the owner of the Lotus Garden Chinese restaurant in Farmingdale where Gioeli, CW-1 and an alleged Colombo family associate allegedly conducted surveillance for the purpose of robbing him.
- c. The name of the alleged Colombo family associate who allegedly conducted surveillance with Gioeli and CW-1 of the owner of the Lotus Garden Chinese restaurant in Farmingdale for the purpose of robbing him.

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19. Conspiracy to Rob Manhattan Jewelry Store

- a. The specific date, time and location when Gioeli and CW-1 allegedly conducted surveillance in or around February 2003 of a jewelry store in Manhattan for the purpose of robbing that location.
- b. The specific date, time and location when CW-1 and CW-2 allegedly conducted surveillance in or around February 2003 of a jewelry store in Manhattan for the purpose of robbing that location.

20. Assault at a Carting Company

- a. The specific date, time, location and name of the carting company located in the vicinity of Route 110 in Huntington where Gioeli, CW-1, CW-2 and Greaves allegedly assaulted a male in the early 1990s.
- b. The name of the male whom Gioeli, CW-1, CW-2 and Greaves allegedly assaulted at carting company located in the vicinity of Route 110 in Huntington in the early 1990s.
- c. The specific nature of the injuries allegedly suffered by the male whom Gioeli, CW-1, CW-2 and Greaves allegedly assaulted at carting company located in the vicinity of Route 110 in Huntington in the early 1990s, including hospital records, if any.

21. Assault at a Meat Market

- a. The specific date, time, location and name of the meat market in Brooklyn where CW-1 and CW-2 allegedly assaulted an individual at Gioeli's direction in the early 1990s.
- b. The name of the individual whom CW-1 and CW-1 allegedly assaulted at Gioeli's direction at a meat market in Brooklyn in the early 1990s.
- c. The specific nature of the injuries suffered by the individual whom CW-1 and CW-1 allegedly assaulted at Gioeli's direction at a meat market in Brooklyn in the early 1990s, including hospital records, in any.

22. Assault at Lenny's Candy Store

- a. The specific date, time and location of Lenny's Candy Store in downtown Brooklyn where Gioeli and CW-1 allegedly demanded a debtor pay a debt and assaulted him on behalf of William Russo in the mid-1990s.

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AUSA Christina Posa

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- b. The identity of "Lenny the Barber" whom William Russo allegedly arranged to lure a debtor to Lenny's Candy Store where Gioeli and CW-1 allegedly demanded a debtor pay a debt and assaulted him on behalf of William Russo in the mid-1990s.
- c. The specific identity of the debtor Gioeli and CW-1 allegedly demanded a debtor pay a debt and assaulted on behalf of William Russo at Lenny's Candy Store in the mid-1990s.
- d. The nature of the injuries suffered by the debtor Gioeli and CW-1 allegedly demanded to pay a debt and assaulted on behalf of William Russo at Lenny's Candy Store in the mid-1990s, including hospital records, if any.

23. Assault of Gioeli's Daughter's Boyfriend

- a. The specific date and time when CW-1 and CW-2 were allegedly with Gioeli at his residence when they observed one of Gioeli's daughters being harassed by her boyfriend.
- b. The specific date, time and location where CW-1 and CW-2 allegedly assaulted one of Gioeli's daughter's boyfriends for harassing her.
- c. The identity of Gioeli's daughter and her boyfriend whom CW-1 and CW-2 allegedly assaulted on Gioeli's instructions for harassing one of his daughters.
- d. The specific nature of the injuries suffered by Gioeli's daughter's boyfriend when CW-1 and CW-2 allegedly assaulted him for harassing one of Gioeli's daughters, including hospital records, if any.

24. Extortion

- a. The specific dates, times, names and locations of business owners from whom Gioeli allegedly collected protection money including the amounts allegedly collected.
- b. The specific dates, times, names and locations of business owners where CW-1 allegedly collected protection money on behalf of Gioeli including the amounts allegedly collected.
- c. The identity of the nightclub on Route 110 in Long Island that allegedly paid \$2,000 per month to Gioeli for protection money and the dates and times of the alleged payments.

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- d. The identity of the alleged Colombo family associate who operated a lucrative bookmaking business from whom Gioeli alleged collected annual payments, including the amount and dates of the alleged payments.

25. Joker Poker Machines

- a. The specific names and locations of establishments with Joker Poker machines in Brooklyn and Long Island where Gioeli allegedly collected proceeds in the 1990s.
- b. The specific dates and times when Gioeli allegedly collected proceeds in the 1990s from establishments with Joker Poker machines in Brooklyn and Long Island.

I want to thank you in advance for your promptly providing the information sought by this letter.

Very truly yours,



Adam D. Perlmutter

Cc: Thomas Gioeli (via regular mail)
Carl J. Herman, Esq. (via electronic mail)
Samuel Braverman, Esq. (same)



U.S. Department of Justice

United States Attorney
Eastern District of New YorkEAG/JDG/CMP
F.#2008R00530271 Cadman Plaza East
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May 26, 2011

By Facsimile

Adam D. Perlmutter, Esq.
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260 Madison Avenue, Suite 1800
New York, New York 10016

Re: United States v. Thomas Gioeli, et al.
Criminal Docket No. 08-240 (S-6) (BMC)

Dear Mr. Perlmutter:

The government writes in connection with your letter dated May 4, 2011, in which you request information regarding uncharged acts by defendants Gioeli and Saracino the government has moved in limine to admit at trial. (See Mem. of Law in Supp. of Gov't's Mot. In Limine, dated Apr. 22, 2011 (Docket No. 1134) ("Gov't's Br.")).

As the government informed your colleague Mr. Herman at the May 11, 2011 appearance in this case, the government submits that it has provided more than adequate notice of the uncharged acts it seeks to admit against the defendants in its detailed moving papers to enable Gioeli and Saracino both to prepare responses in opposition to the government's in limine motion and to defend against the evidence at trial and, accordingly, declines to provide any additional information at this time. (See Gov't's Br. at 11-23). Furthermore, any additional requests for discovery with respect to the uncharged acts at issue in the government's motion amount to a request that the government preview its case, an obligation the law does not require. See United States v. Gottri, 784 F. Supp. 1017, 1019 (E.D.N.Y. 1992) (Glasser, J.) (denying defendants' request for a bill of particulars as to uncharged crimes about which the government sought to introduce evidence at trial) (citing United States v. Gottlieb, 493 F.2d 987, 994 (2d Cir. 1974) and United States v. Leonelli, 428 F. Supp. 880, 882 (S.D.N.Y. 1977)).

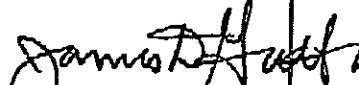
Adam D. Perlmutter, Esq.
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Please contact us should you have any additional requests.

Very truly yours,

LORETTA E. LYNCH
United States Attorney

By:


Elizabeth A. Geddes
James D. Gatta
Cristina M. Posa
Assistant U.S. Attorneys

cc: Carl J. Herman, Esq. (by facsimile)
Samuel M. Braverman, Esq. (by facsimile)